

BOARD OF PESTICIDES CONTROL

October 28, 2005

Colby/Thomas Room, Hampton Inn
425 Kennedy Memorial Drive, Waterville

AGENDA/MINUTES

9:30 A.M.

Chair Carol Eckert called the meeting to order at 9:35 A.M. Other members in attendance included Berry, Humphreys, Jemison, Simonds and Walton. Bradsteet was unable to attend. Assistant Attorney General Mark Randlett was also present.

1. Introductions of Board and Staff

- ☒ The members and staff introduced themselves.

2. Minutes of the September 9, 2005 Board Meeting

Action Needed: Amend and/or Approve

- ☒ Berry/Walton: Motion made and seconded to approve the minutes as distributed.

In Favor: Unanimous

3. Workshop Session to Review the Rule-making Record for Proposed Chapter 26

A public hearing was held on September 9, 2005 on proposed rule Chapter 26 to set standards for pesticide applications and notification for all occupied buildings except K-12 schools. Seven people spoke in opposition to the rule, four people spoke in favor of the proposal and two people from the Department of Corrections sought clarification about providing notification to inmates. The comment period closed on September 26 with 9 letters and 229 postcards in opposition and two letters and 51 e-mail messages in support of the rule. The staff has concluded that the proposed rule needed major revisions and has developed an alternate proposal that would require initiating a new rule-making process if the members agree.

Presentation By: Robert I. Batteese, Jr.
Director

Action Needed: Discussion and determination if the members wish to make minor adjustments to the current proposal or abandon it and work with the staff's new proposal.

- ☒ Batteese reported that the staff had concluded there were still major problems with the proposed rule. The most serious were in the notification procedures and the provisions that allowed applicators to make daytime treatments in food handling areas and

establishments open around the clock but required they treat all other locations at night and on weekends. He explained that in correcting these problems the staff had to make substantive changes that likely would require initiating a new rule-making process if the members agreed with the proposed staff revisions. Eckert and Humphreys agreed on the need to abandon the current proposal but Humphreys indicated she felt it would be a step backwards if persons in adjacent apartments were not notified. This led to a discussion of creating a registry for residents. Randlett suggested that the rule could require a notice be placed in common areas advising a registry is available. Eckert then asked about singling out bed bug treatments. It was agreed to delete that provision and put bed bugs on the top of a list of public health pests that the Board would adopt as a policy. Eckert asked and found there was consensus the staff should come back to the next meeting with further revisions of the proposed rule, proposed notices, policy on public health pests, an indoor registry and universal logo.

Humphreys/Walton: Motion made and seconded to abandon the September 9, 2005 version of the proposed rule and move forward with additional revisions to the staff's latest draft for a new proposed rule.

In Favor: Unanimous

4 Review of Draft Program Evaluation Report

The Joint Standing Committee on Agriculture, Conservation and Forestry has requested the Board to prepare and submit a program evaluation report by November 1st. This report is required pursuant to the Government Evaluation Act, Title 3 of the Maine Revised Statutes, Chapter 35. The Board was last reviewed in 1999. The staff has prepared a draft report and will be seeking Board input especially on the sections discussing finances and emerging issues.

Presentation By: Robert I. Batteese, Jr.
Director

Action Needed: Discussion and determination if there is additional information that should be included in the report.

- ☒ Batteese asked the members to review Sections 7 and 11 that had been included in their folders this morning. The members pointed out a few typos and asked about a discrepancy in the number of licensees reported on pages 4-1 and 10-1. They then thanked the staff for preparing such an extensive report. Humphreys commented that it should serve as a good introductory document to give to future Board members.

5. Enforcement Action Against Cory Capitan of Poland

The staff will detail the results of their review of a complaint from Modern Pest Services about a former employee. They reported that Mr. Capitan convinced at least 11 customers to cancel their service with Modern and instead have him treat their properties at a reduced rate on his own time as an independent contractor. At the time of these applications, Mr. Capitan was not licensed as an independent contractor. These actions constitute violations of the Board's statute and regulations requiring that a person be

licensed as a commercial applicator in order to perform custom applications.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Decision on appropriate enforcement response.

- ☒ Jennings summarized the case and reported that Capitan had ignored the certified letter the staff had sent. Jemison questioned if the proposed fine was high enough while a manager at Modern Pest Services reported that Capitan had signed an agreement to pay them for the lost business but only made two payments before disappearing.

Simonds/Berry: Motion made and seconded to refer the case to the Office of the Attorney General.

In Favor: Unanimous

6. Consideration of Staff Negotiated Consent Agreement with Greg Moyer Landscaping of Bath

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved two employees of the company making a for-hire application of an insecticide to ornamental trees on the grounds of the Applebee's Restaurant in Brunswick on May 21, 2004. In addition, the employees admitted that they had performed weed and feed applications for other customers that spring. At the time of the applications, the company did not have anyone licensed as a commercial applicator. These actions constituted a violation of the Board's statute requiring that a person hold a commercial pesticide applicator license in order to perform custom pesticide applications.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings noted this was a simple case of an unlicensed landscaper who had been most unhappy to be cited but had finally agreed to complete a payment plan for the penalty.

Jemison/Humphreys: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

7. Consideration of Staff Negotiated Consent Agreement with Paul Dumont of Sunset Apiary in Windsor

This case is similar to the preceding agenda topic where there was no dispute of material facts or law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. This case involved six separate purchases and resulting applications of the restricted use Phostoxin to control greater wax moth in his beekeeping equipment. At the time of these purchases and applications, Mr. Dumont did not possess a private applicator license. These actions constitute violations of the Board's statute that requires a person to be licensed as a private applicator when purchasing or applying restricted use pesticides for the purpose of treating an agricultural commodity on their own property.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings explained the State Apiarist brought this case to his attention after realizing that the beekeeper had used his license for the past six years to purchase a very toxic fumigant to clean his beekeeping equipment.

Simonds/Berry: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

8. Consideration of Staff Negotiated Consent Agreement with Degesch America, Inc of Weyers Cave, Virginia

This case is also similar to the preceding agenda topic where there was no dispute of material facts or law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. This case involved six separate sales of the restricted use Phostoxin to Mr. Dumont in Windsor. At the time of these sales, the company was not licensed as a restricted use pesticide dealer. These actions constitute violations of the Board's statute that requires a person to be licensed as a restricted use pesticide dealer to distribute such products in Maine.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings explained the company committed two violations by selling a restricted use pesticide to an unlicensed applicator and failing to possess a restricted use pesticide dealer license at the time of the sales.

Jemison/Simonds: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

9. Consideration of Staff Negotiated Consent Agreement with Lewis Brothers Golf & Property Services of Falmouth

This case is similar to the preceding agenda topic where there was no dispute of material facts or law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. This case involved an employee of the company who performed a custom application of pesticides to the grounds of a commercial building in New Gloucester. At the time of the application, the employee did not have a commercial license nor was he being supervised by a licensed commercial applicator. This action constituted a violation of the Board's statute requiring that a person hold a commercial pesticide applicator license in order to perform custom pesticide applications.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings pointed out this company had been very aggressive in using low risk products but for some reason had an unlicensed employee applying the chemicals when none of the licensed personnel were close enough to provide the required supervision.

Simonds/Humphreys: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

10. Consideration of Staff Negotiated Consent Agreement with Basham Tree Service of South China

This case is similar to the preceding agenda topic where there was no dispute of material facts or law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. This case involved a company that was contracted by the Maine Department of Transportation to control brush on the roadsides of Route 17 in Byron. They were working under a variance permit from the Board when an employee made a powered application of an herbicide within 20 feet from a stream. This application violated the provisions of the variance permit that required a buffer of 50 feet for powered application equipment.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings explained that a MDOT employee had reported the incident to the Board's staff. In response to a question, Bob Moosmann of MDOT reported that his agency used to pay contractors by the hour but had switched to an asset driven system where they are paid by

the centerline mile. Since it takes longer to perform the backpack applications, he had been concerned they might try to cut corners. He urged the Board to send his contractors a message that they must observe the buffer zones agreed to in the variance permit. Jemison expressed concern that the fine was too low.

Berry/Humphreys: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Berry, Eckert, Humphreys, Simonds and Walton
Opposed: Jemison

11. Consideration of Staff Negotiated Consent Agreement with TruGreen ChemLawn of Westbrook

This case is similar to the preceding agenda topic where there was no dispute of material facts or law, and the violator admitted to the violations and acknowledged a willingness to pay a fine and resolve the matter. This case involved an employee's commercial application of an insecticide to a property in Scarborough that was listed on the 2005 Pesticide Notification Registry. The company failed to provide notice to the registrant in advance of the application that is a violation of the registry provisions in Chapter 28.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings noted there are only 20 people on the registry so it should not be too much trouble to notify these people in advance of an application. He also pointed out this was their second violation within four years.

Jemison/Berry: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

12. Consideration of Staff Negotiated Consent Agreement with TruGreen ChemLawn of Westbrook

This case is similar to the preceding agenda topic where there was no dispute of material facts or law, and the violator admitted to the violations and acknowledged a willingness to pay a fine and resolve the matter. This case involved the for-hire applications of two pesticides to turf areas surrounding the residences at 34 and 38 Bay Road in Bowdoinham when the intended clients lived at 34 and 38 Middlesex Road in Topsham. These actions constituted a violation of the Board's Chapter 22 Regulation requiring that pesticide applications be undertaken in a manner that does not result in off-target direct discharge of pesticides.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennnings reminded the members this was the case that resulted in the Board developing the policy requiring applicators to positively identify the application site. He noted that it involved two violations because of treatments to two different properties.

Jemison/Berry: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

13. Other Old or New Business

a. ERAC Update – L. Hicks

- ☒ Hicks reported that three meetings had been held and two more were planned before the group prepared a report for the Board's December 16th meeting. Humphreys thanked Hicks for assembling a very good group of people to address the potential risks of browntail moth applications to lobsters.

b. Interviews for Public Relations Representative – R. Batteese

- ☒ Batteese advised that 12 candidates had applied for the position and that a three-person team had screened them down to eight to be interviewed. Three of these candidates declined to be interviewed so five people with varying backgrounds and skills had been interviewed. He hoped the team would be able to make a selection in the coming week.

c. Applications to Soggy Lawns – G. Fish

- ☒ Fish reported he had conversed with Simonds and also conducted a search that found several states and universities with BMPs. Simonds indicated the Maine Forest Service had an excellent BMP Manual that could be used as a model for structure and format. Fish agreed to bring back nominations for membership on a committee that Simonds and Jemison would co-chair.

d. Other ???

- ☒ None

14. Schedule and Location of Future Meetings

a. Date and location for the next meeting tentatively scheduled for November 18th.

- ☒ The Board scheduled the next meeting for Friday, November 18th.

b. Date and location for the following meeting tentatively scheduled for December 16th.

☒ The Board tentatively scheduled the following meeting for Friday, December 16th.
The members also tentatively scheduled a meeting for Friday, January 20, 2005.

15. Adjourn

☒ A motion to adjourn was accepted at 12:15 P.M.

Robert I. Batteese, Jr.
Director